

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;  
Mark Acton, Vice Chairman;  
Ann C. Fisher;  
Ashley E. Poling; and  
Robert G. Taub

Competitive Product Prices  
Parcel Select Contract 41 (MC2021-34)  
Negotiated Service Agreement

Docket No. CP2021-35

ORDER APPROVING AMENDMENT TWO TO  
PARCEL SELECT NEGOTIATED SERVICE AGREEMENT

(Issued January 20, 2023)

I. INTRODUCTION

The Postal Service seeks to amend a Parcel Select negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the Amendment.

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<sup>1</sup> USPS Notice of Amendment to Parcel Select Contract 41, Filed Under Seal, January 18, 2023 (Notice). The Amendment is an attachment to the Notice (Amendment).

## II. BACKGROUND

In Order No. 5767, the Commission approved the Parcel Select Contract 41 negotiated service agreement (Existing Agreement).<sup>2</sup> On January 18, 2023, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. The Postal Service also filed motions for late acceptance and expedited treatment.<sup>3</sup>

The Motion for Expedited Treatment states “[t]he Postal Service previously filed an amendment to extend Parcel Select Contract 41 on December 19, 2022, however the Commission has not approved this amendment despite the anticipated January 17, 2023 approval date.” Motion for Expedited Treatment at 1. This statement is factually incorrect. The Commission approved that amendment on December 21, 2022. See Order No. 6381. Order No. 6381 extended the expiration date of the contract from December 31, 2022, to January 21, 2023. Order No. 6381 at 2, 3. The Motion for Expedited Treatment states that the expiration date of the Existing Agreement is January 21, 2023,<sup>4</sup> rather than December 31, 2022, so the Postal Service is evidently aware that the amendment filed December 19, 2022, was in fact, approved.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1.

## III. COMMISSION ANALYSIS

The Commission has reviewed the Notice and the accompanying materials filed under seal.

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<sup>2</sup> See Docket Nos. MC2021-34 and CP2021-35, Order Adding Parcel Select Contract 41 to the Competitive Product List, December 8, 2020 (Order No. 5767). The contract was later amended. See Order Approving Amendment One to Parcel Select Negotiated Service Agreement, December 21, 2022 (Order No. 6381).

<sup>3</sup> USPS Motion for Late Acceptance of Notice of Amendment to Parcel Select Contract 41, January 18, 2023 (Motion for Late Acceptance); USPS Motion for Expedited Treatment of Notice of Amendment to Parcel Select Contract 41; January 18, 2023 (Motion for Expedited Treatment).

<sup>4</sup> Motion for Expedited Treatment at 1.

*Cost considerations.* The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Existing Agreement is set to expire January 21, 2023.<sup>5</sup> The Amendment revises the expiration date of the contract to February 21, 2023. Notice, Attachment A at 1.

The Amendment does not materially affect the underlying financial analysis of the Existing Agreement. Thus, the Commission finds that the Existing Agreement, as amended, comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3035.107.

*Timeliness.* The Notice is untimely.<sup>6</sup> Under the guidance previously provided by the Commission, the Notice should have been filed no later than January 13, 2023—seven days before the last day on which the Commission could approve the amendment so that the amendment would take effect prior to the expiration of the contract. See Order No. 5444 at 4-5. In its Motion for Late Acceptance, the Postal

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<sup>5</sup> See Order No. 5767 at 2 (setting original expiration date as December 31, 2022); Order No. 6381 at 2, 3 (revising expiration date to January 21, 2023).

<sup>6</sup> See Docket No. CP2017-253, *et al.*, Order Approving Modifications and Providing Guidance Regarding Extending Negotiated Service Agreements, October 30, 2018, at 4 (Order No. 4866) (requiring notices of modification to be filed at least seven days prior to contract expiration); Docket No. CP2016-185, Order Approving Amendment Three to First-Class Package Service Negotiated Service Agreement, Granting Motion for Temporary Relief, and Providing Guidance, March 3, 2020, at 4-5 (Order No. 5444) (advising that the Commission counts the seven day advance filing requirement from the earlier of: (1) the contract's expiration date; or (2) the last date by which the amendment or modification would need to be approved for the amendment or modification to be effective at extending the contract).

Service explained that the delay was the result of ongoing negotiations with the customer regarding a successor contract, and that no party has been materially prejudiced by the delay. Motion for Late Acceptance at 1.

The Commission notes that the occurrence of ongoing negotiations does not explain why the Postal Service was unable to meet the filing deadline, and thus the explanation provided does not justify the delay. See Order No. 4866 at 4. The Commission will, however, *exceptionally*, grant the motion. Future motions for late acceptance should state with specificity the circumstances justifying the delay.

*Other considerations.* The Postal Service states that the Amendment shall become effective one business day after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire February 21, 2023. Notice, Attachment A at 1.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Parcel Select Contract 41 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the revised expiration date, February 21, 2023.

By the Commission.

Erica A. Barker  
Secretary